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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ABNER DE LA CRUZ-CONTRERAS,

Plaintiff,

-against-

KRISTI NOEM, in her official capacity as
Acting Secretary of Homeland Security;
PETE R. FLORES, in his official capacity as
Commissioner of the U.S. Customs and
Border Protection; and RICARDO WONG, in
his official capacity as Field Office Director
of the ICE ERO Chicago, C. CARTER in her
official capacity as WARDEN of FCI
Leavenworth,

Defendants.

25 CV 3232-JWL

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
MANDAMUS**

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner, Abner De La Cruz-Contreras (“Petitioner”) is a native and citizen of Guatemala who is presently detained at FCI Leavenworth, Leavenworth, Kansas, under the custody of U.S. Immigration and Customs Enforcement (“ICE”). He petitions for a writ of habeas corpus under 28 U.S.C. § 2241 challenging his prolonged and unlawful detention following a final order of removal for which removal cannot be lawfully executed.

2. On February 26, 2025, Immigration Judge (“IJ”) in the Chicago Immigration Court ordered Petitioner removed to Guatemala under INA § 212(a)(6)(A)(i) but granted withholding of removal under INA § 241(b)(3). Thus, the government is legally barred from removing him to Guatemala. Despite this, he remains detained in ICE custody with no foreseeable prospect of removal, in violation of the Constitution and federal law.

JURISDICTION AND VENUE

3. This petition arises under the Constitution and laws of the United States, including the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Jurisdiction is proper because Petitioner challenges the legality of his ongoing immigration detention, which has become unreasonably prolonged in violation of the Constitution, federal statutes, and regulations.

1. Venue is proper because Petitioner is detained within the District of Kansas at FCI Leavenworth. Venue is also proper because Respondents are officers, employees, or agencies of the United States, and Warden of FCI Leavenworth, resides in this District. In addition, a substantial part of the events or omissions giving rise to this action occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

PARTIES

5. Petitioner Abner De La Cruz-Contreras, A# , is a native and citizen of Guatemala, born on June 29, 1991. He entered the United States without inspection in or around July 2021 and is now in ICE custody.

6. Respondent C. Carter is the Warden of FCI Leavenworth and has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

7. Respondent Ricardo Wong is sued in his official capacity as the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Chicago Field Office. Respondent Wong is a legal custodian of Petitioner and has authority to release him from ICE custody.

8. Respondent Pete R. Flores is sued in his official capacity as the Commissioner of U.S. Customs and Border Protection (CBP). In this capacity, Respondent Flores is responsible for the administration and enforcement of the nation's immigration laws at and between ports of entry. Respondent Flores is a legal custodian of Petitioner.

9. Respondent Kristi Noem is sued in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

FACTUAL BACKGROUND

10. Petitioner was born in Guatemala on June 29, 1991. He fled his country due to persecution and entered the United States without inspection around July 2021.

11. The Department of Homeland Security initiated removal proceedings under INA § 212(a)(6)(A)(i) (alien present without admission or parole). On January 27, 2025, Petitioner submitted his Form I-589 (Application for Asylum and Withholding of Removal), seeking protection from return to Guatemala.

12. At his hearing on February 26, 2025, IJ denied asylum but granted withholding of removal under INA § 241(b)(3), finding that Petitioner demonstrated it is more likely than not that his life or freedom would be threatened in Guatemala. The IJ nonetheless entered an order of removal to Guatemala, which is barred by law because of the withholding grant.

13. Both DHS and Petitioner waived appeal, rendering the order final on February 26, 2025.

14. Petitioner has remained in ICE custody since that time and is currently detained at FCI Leavenworth, a federal facility used for civil immigration detention.

15. Petitioner acknowledges that he has been charged with criminal conduct in the State of Indiana; that matter remains pending before the state court and does not constitute a final conviction. Nothing in that case authorizes his indefinite civil immigration detention.

16. As of August 25, 2025, Petitioner has been detained for more than 180 days following entry of the final order, exceeding the presumptively reasonable period under Zadvydas v. Davis, 533 U.S. 678 (2001).

17. Federal law permits detention of noncitizens only for a period reasonably necessary to effectuate removal. See 8 U.S.C. § 1231(a)(6). Detention is civil, not punitive, and must bear a reasonable relation to its purpose — ensuring removal. When removal is barred or impossible, continued detention violates the Due Process Clause of the Fifth Amendment.

CLAIMS FOR RELIEF

Count I — Violation of the Fifth Amendment (Due Process Clause)

19. Petitioner re-alleges paragraphs 1 through 18.

20. Petitioner's continued detention is arbitrary and no longer reasonably related to any legitimate government purpose, as his removal to Guatemala is prohibited by law.

21. The failure to provide a bond hearing or any meaningful review of continued custody violates his right to due process under the Fifth Amendment.

Count II — Violation of 8 U.S.C. § 1231(a)(6) and Implementing Regulations

22. Petitioner re-alleges paragraphs 1 through 21.

23. ICE has detained Petitioner beyond the six-month presumptively reasonable period without showing that removal is significantly likely in the reasonably foreseeable future, contrary to *Zadvydas*.

24. Respondents' failure to release Petitioner or conduct a meaningful custody review violates § 1231(a)(6) and 8 C.F.R. § 241.4.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

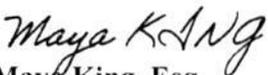
22. Issue an Order to Show Cause requiring Respondents to justify Petitioner's continued detention as required by 28 U.S.C. § 2243;

23. Declare that Petitioner's continued detention violates the Fifth Amendment and 8 U.S.C. § 1231(a)(6);

24. Order Petitioner's immediate release under reasonable conditions of supervision; and

25. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,


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